

FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
Regional Branch, Allahabad

To

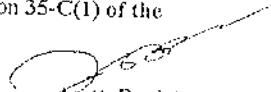
Dated: 27/11/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71632-71633/2017-SM[BR] dated 24/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.


Asstt. Registrar

Application	Appeal	Name and Address of Appellant
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E/70533/2017

Vishal Pipes Limited
A-71, Industrial Area, Sikandrabad
BULANDSHAHR
UP

E/70534/2017

Vishal Pipes Limited
A-71, Industrial Area, Sikandrabad
BULANDSHAHR
UP

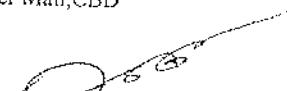
Name and Address of Respondent

C E & ST-Noida li
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL FORMULE I,
WEGMANS BUSINESS PARK, KP-III,
GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

C E & ST-Noida li
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL FORMULE I,
WEGMANS BUSINESS PARK, KP-III,
GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

Other Appellants and Respondents as per Annexure
Copy To

- 5 Bar Association, CESTAT, Allahabad
- 6 Director Publications, Customs, Excise. I.P. Estate, Delhi
- 7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishun Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3
- 8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
- 9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
- 10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
- 13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
- 14 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD Ground, Near Karkardooma Court, Delhi-110032
- 15 C.D.R.
- 16 Office Copy
- 17 Second Folder Copy
- 18 Guard File


Asstt. Registrar

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

Ex.Appeal Nos.70533,70534/17

Arising out of O/A No.NOI-EXCUS-002-APP-0029-30-17-18 dated 04.05.2017
passed by Commr. of Central Excise & Customs, Noida.

M/s Vishal Pipes Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs & S.Tax, Noida II

RESPONDENT (S)

APPEARANCE

Ms.Pratiksha Singh, Authorised Representative for the Appellant (s)
Shri Gyanendra Kr. Tripathi, Asstt. Commr. (A.R.) for the Revenue

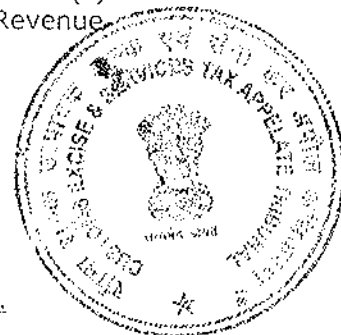
CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 14. 11. 2017

DATE OF PRONOUNCEMENT :

Final ORDER NO. 71632 - 71633/2017.



Per Mrs.Archana Wadhwa :

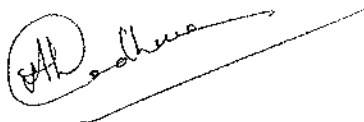
As per facts on record, the appellants are engaged in the manufacture of Steel Tubes & Pipes, structural Pipes and rigid PVC Pipes chargeable to duty under Chapter 73 of the Central Excise Tariff Act, 1985 and were availing the cenvat credit on various input services and capital goods used in the manufacture of their final product.

2. Apart from the manufacturing goods on their own, the appellant was doing job work with the principal manufacturer. Revenue by entertaining a view that the manufacture of the goods on job work basis amounts to providing services, which were exempted from

Ex.Appeal Nos.70533,70534/17

payment of service tax and the appellant was not entitled to cenvat credit of service tax paid on common inputs and common services, raised the demand at the rate of 6% of the job charges in terms of the provisions of Rule 6 (3) (1) (i) of Cenvat Credit Rules, 2004. A demand so raised by invoking longer period of limitation was confirmed. The said confirmation was upheld by the Commissioner (Appeals) . Hence the present appeal.

3. After hearing both sides, I find that admittedly the appellant was doing job work in their ~~two~~^{AP} manufacturing units and were clearing the goods to the principal manufacturer without payment of duty. The principal manufacturer was paying duty on their final product, which included the job work manufactured goods. The Larger Bench of the Tribunal in the case of Sterlite Industries (I) Ltd. Vs. CCEx. Pune reported in 2005 (183) ELT 353 (Tri.LB.), has observed that the goods manufactured on job work basis, cannot be considered to be exempted goods inasmuch as the same are sent back to the principal manufacturer, who undertakes to pay the duty in respect of the same. The said decision stands followed by the Tribunal in a number of judgements. Reference can be made to the decisions of the Tribunal in the cases of (i) JBF Industries Vs. Commr. of Central Excise & S.Tat, Vapi : 2014 (34) STR 345 (Tri.-Ahmd.) & (ii) Alkyl Amines Chemicals Ltd. Vs. 2015 (40) STR 757 (Tri.Mumbai). Further, a reference can be made to the decision of the Tribunal in the case of New Era Handling Agency Vs. Commissioner : 2015 (37) STR 344 (Tri.Mumbai). The said decision of the Tribunal stands confirmed by the Hon'ble

A handwritten signature in black ink, appearing to read 'S. H. Dhruv', is written over a circular official stamp. The stamp contains some illegible text and a central emblem. A horizontal line is drawn across the bottom of the signature.

Ex. Appeal Nos. 70533, 70534/17

Supreme Court in the case of Commissioner Vs. New Era Handling Agency reported in 2016 (44) STR J278 (S.C.). It was held that the packing of fertilizer is a manufacturing activity and does not fall under service industries. ^AAs reported in the case of Alkyl Amines Chemicals Ltd. referred (supra), ^{It}It was again observed that the activity of conversion, amounts to manufacturer and ^{falls}availed outside the purview of business auxiliary service and demand in terms of Rule 6 is not sustainable.

4. Inasmuch as the issue stands decided, I find no justifiable reason to uphold the impugned order of the authorities below. Accordingly, the same are set aside and both the appeals are allowed with consequential relief.

Pronounced in the open Court on 24/11/17 

Sd/-

(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy


15-12-17
सहायक न्यायाधीश/Asstt. Registrar
खिलाफत, अदालत एवं सेवा कर
अधीन न्यायाधीश(C.E.S.T.A.T.)
38, एल.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001